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Pan-American Life Insurance Company

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DONNA MATHEWS,

Plaintiff,

vs.

PAN-AMERICAN LIFE INSURANCE
COMPANY,

Defendant.

No.: C 07-02757 SBA

**EX PARTE APPLICATION FOR ORDER
CONTINUING MOTION CUT-OFF DATE
TO NEXT AVAILABLE HEARING DATE**

Honorable Sandra B. Armstrong

Defendant Pan-American Life Insurance Company respectfully applies *ex parte* for an order continuing the motion cut-off date to June 10, 2008, or alternatively, permitting Pan-American's Motion for Summary Judgment to be heard on June 3, 2008. This *ex parte* application is made pursuant to Local Rule 7-10, as well as Judge Armstrong's Standing Order and Scheduling Information. This application is made on the following grounds: (1) the Motion Cut-Off for this case is June 3, 2008; (2) based on the June 3, 2008 Motion Cut-Off date, the parties' last day to file and serve motions is April 29, 2008; and (3) June 3, 2008 is no longer available on this Court's calendar. This application is based on the accompanying memorandum of points and authorities, and Declarations of Eugenia S. Chern and Thomas A. Evans.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

Defendant Pan-American Life Insurance Company ("Pan-American") applies *ex parte* for an order continuing the Motion Cut-Off Date to June 10, 2008, the next available hearing date on the Court's calendar. Pan-American submits this application on the following grounds: (1) the Motion Cut-Off for this case is June 3, 2008; (2) based on the June 3, 2008 Motion Cut-Off date, the parties' last day to file and serve motions is April 29, 2008; and (3) as of April 25, 2008, June 3, 2008 was no longer available for civil motion hearings on this Court's calendar.

II. Legal Argument.

Pursuant to Judge Armstrong's Order for Pretrial Information filed in this action on September 19, 2007, "[a]ll motions including dispositive motions shall be *heard* on or before **6/3/08**, at 1:00 p.m." The Order further provides as follows:

THIS COURT DOES NOT RESERVE MOTION HEARING DATES. The parties are advised to check Judge Armstrong's calendar at www.cand.uscourts.gov, under Scheduling Information to determine the next available hearing date, particularly in the case of a dispositive motion.

Pursuant to Civil Local Rule 7-2(a), "all motions must be filed, served and noticed in writing on the motion calendar of the assigned Judge for hearing **not less than 35 days** after service of the motion." (Emphasis added). Since the last day to hear motions is June 3, 2008, the last day to file motions is therefore April 29, 2008.

During the week of April 14, 2008, Pan-American's counsel reviewed Judge Armstrong's Scheduling Information on the Court's website to determine whether June 3, 2008 was available on Judge Armstrong's civil motion hearing calendar. Declaration of Eugenia S. Chern ("Chern Decl."), ¶ 2). At the time, the Scheduling Information indicated that the June 3, 2008 hearing date was still available. *Id.* However, when Pan-American's counsel checked the Scheduling Information again on April 24, 2008 – five days prior to the parties' last day to file and serve motions for hearing on June 3, 2008 – it indicated that June 3, 2008 was no longer available and the soonest available hearing date was June 10, 2008. *Id.*, ¶ 3.

1 Judge Armstrong's Scheduling Information on the Court's website provides that "[i]f your
2 motion cut-off date is prior to 6/10/08 you will need to submit an Ex Parte Application along with
3 your motion papers requesting that your motion cut-off deadline be extended to the court's next
4 available hearing date." Accordingly, pursuant to the Scheduling Information provided, Pan-
5 American applies *ex parte* for an order continuing the Motion Cut-Off Date from June 3, 2008 until
6 June 10, 2008, or the next available civil motion hearing date on the Court's calendar. Alternatively,
7 Pan-American requests that the Court allow Pan-American's Motion for Summary Judgment, Or
8 Alternatively, Partial Summary Judgment to be heard on June 3, 2008. Pan-American is filing its
9 Motion concurrently with this Application. Pan-American is also filing its Motion on or before the
10 original deadline of April 29, 2008, in accordance with the timing requirements set forth in Local
11 Rule 7-2(a) and Judge Armstrong's Order for Pretrial Information. Pan-American's counsel
12 immediately contacted plaintiff's counsel Michael E. Kinney on April 24, 2008 by telephone to ask
13 whether he would stipulate to a continuance of the motion hearing cut-off date as soon as it was
14 discovered that the June 3 hearing date was no longer available. *Id.* Mr. Kinney, however, declined
15 to stipulate. Chern Decl., ¶ 3.

16 Good cause exists to grant a continuance of the Motion Cut-Off Date. Pan-American's
17 Motion, if successful, may dispose of the entire case, or narrow the issues for trial. In addition, even
18 if Pan-American's application is granted, plaintiff is still receiving the requisite 35-days notice for
19 Pan-American's Motion as required by Local Rule 7-2(a). Plaintiff is therefore not prejudiced if the
20 Court continues the Motion Cut-Off Date. Further, the continuance of the Motion Cut-Off Date will
21 not affect any other deadlines or hearing dates set by this Court.

22 In addition, to the extent the Court believes there has been any delay in the filing of this
23 motion, while counsel for Pan-American had sought to file this action earlier, he has had to limit his
24 schedule throughout the month of April as a result of sudden medical problems with one of his
25 children, which has resulted in several unexpected hospitalizations in the past month. Declaration of
26 Thomas A. Evans, ¶ 2. Although counsel had hoped to keep the filing on schedule, these health
27 issues continued, affecting his ability to prepare and coordinate the preparation and filing of this
28 motion. *Id.*

1 **III. Conclusion.**

2 For the foregoing reasons, Pan-American respectfully requests that the Court enter an order
3 continuing the Motion Cut-Off Date to June 10, 2008, the next available civil motion hearing date on
4 Judge Armstrong's calendar. Alternatively, Pan-American requests that the Court permit Pan-
5 American's Motion to be heard on June 3, 2008.

6
7 DATED: April 29, 2008.

8 REED SMITH LLP

9 By /s/ Thomas A. Evans

10 Thomas A. Evans

11 Eugenia S. Chern

12 Attorneys for Defendant

13 Pan-American Life Insurance Company
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REED SMITH LLP

A limited liability partnership formed in the State of Delaware

DECLARATION OF EUGENIA S. CHERN

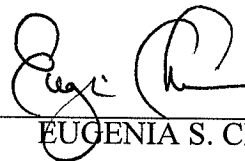
I, Eugenia S. Chern, declare as follows:

1. I am an attorney at law and an associate of the firm of Reed Smith LLP, attorneys of record for defendant Pan-American Life Insurance Company, in the above action. I have personal knowledge of the matters hereinafter set forth, and if called as a witness I would and could testify thereto under oath.

2. During the week of April 14, 2008, I checked the Court's website to determine whether June 3, 2008 was available on Judge Armstrong's civil motion hearing calendar. At the time that I checked, June 3, 2008 was still available.

3. On April 24, 2008, I checked the Court's website again to confirm whether June 3, 2008 was still available on Judge Armstrong's civil motion hearing calendar. According to the Scheduling Information on the website, June 3, 2008 was no longer available and the soonest available hearing date was June 10, 2008. I immediately contacted plaintiff's counsel Michael E. Kinney by telephone to ask whether he would stipulate to a continuance of the motion hearing cut-off date as soon as I discovered that June 3, 2008 was no longer available. Mr. Kinney informed me that he declined to stipulate.

I declare under penalty of perjury under the laws of the State of California and of the United States that the foregoing is true and correct. Executed on April 29, 2008, at Oakland, California.



EUGENIA S. CHERN

DECLARATION OF THOMAS A. EVANS

I, Thomas A. Evans, declare as follows:

1. I am an attorney at law and a partner with the firm of Reed Smith LLP, attorneys of record for defendant Pan-American Life Insurance Company, in the above action. I have personal knowledge of the matters hereinafter set forth, and if called as a witness I would and could testify thereto under oath.

2. I had planned to file Pan-American's Motion for Summary Judgment in advance of the cutoff date of April 29, 2008. However, due to sudden medical problems with one of my children, which has resulted in several unexpected hospitalizations in the past month, I have had to limit and rearrange my schedule throughout the month of April. Although I had hoped to keep the filing on schedule, these health issues continued, affecting my ability to prepare and coordinate the preparation and filing of the Motion.

3. To the extent this declaration is vague it is to avoid placing private information in the record. I did not raise this issue sooner for the same reason, as I had hoped the issue would resolve itself. If the Court requires additional details I would be willing to provide additional information in a chambers conference or by some other means that will not entail placing private information unrelated to this case in the record..

I declare under penalty of perjury under the laws of the State of California and of the United States that the foregoing is true and correct. Executed on April 29, 2008, at Oakland, California.

/s/ Thomas A. Evans
THOMAS A. EVANS

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